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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/775,261	02/01/2001	Thomas E. Weston	IRI05338	7246

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MOTOROLA, INC.
CORPORATE LAW DEPARTMENT - #56-238
3102 NORTH 56TH STREET
PHOENIX, AZ 85018

EXAMINER

MILLS, DONALD L

ART UNIT	PAPER NUMBER
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2662

DATE MAILED: 08/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/775,261

Applicant(s)

WESTON, THOMAS E.

Examiner

Donald L. Mills

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seo (US 6,463,044 B1), hereinafter referred to as Seo, in view of Schuster et al. (US 6,512,761 B1), hereinafter referred to as Schuster..

Regarding claim 1, Seo a method for controlling the traffic load of a base station, which comprises:

Establishing a desired quality level of the communications session, based, in part, upon a provider agreement (Referring to Figure 3, a predetermined Threshold Frame Error Rate ($Th_fer(V)$) which is the maximum level of FER, based in part on the agreed upon quality by the provider. See column 4, lines 36-37.)

Monitoring an actual quality level of the communications session (Referring to Figure 3, an Average Frame Error Rate ($AVG_fer(V)$) of the mobile stations receiving voice service is measured. See column 4, lines 31-33.)

Determining an average of the monitored actual quality level and whether the average monitored actual quality level exceeds the desired quality level (Referring to Figure 3, if the

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AVG_fer(V), average of the actual quality level, is greater than the Th_fer(V), desired quality level. See column 4, line 40.)

Adjusting the actual quality level to the desired quality level by one of the steps of increasing the actual quality level to the desired quality level of the communications session if the monitored actual quality level is less than the desired quality level (Referring to Figure 4, the AVG_fer(V) is adjusted towards the Th_fer(V), when the mobile stations stored in the queue are first reactivated to a level comparable to the Th_fer(V), if the Th_fer(V) is greater than the AVG_fer(V). See column 4, lines 65-66 and column 5, lines 5-6;) and reducing the actual quality level to the desired quality level if the monitored actual quality level is greater than the desired quality level (Referring to Figure 3, the mobile stations are ordered from the mobile station with the smallest to the largest transmission data when the AVG_fer(V) is greater than the Th_fer(V). See column 4, lines 40-41 and 50-51.)

Seo does not disclose determining whether to increase or decrease fees, based, in part, on the adjusted actual quality level and generating an adjusted billing statement to reflect the increased or decreased fees.

Schuster teaches increasing or decreasing fees based in part on the adjusted actual jitter measurement when the transmission delay or jitter for the transmission of a given packet-based signal exceeds/or is less than a predetermined threshold, then the billing entity may decrease/increase its fee for the transmission (See column 13, lines 44-53.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the billing system of Schuster in the system of Seo. One of ordinary

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skill in the art would have been motivated to do so in order to provide pricing that is reflective of the quality of service being provided as taught by Schuster (See column 14, lines 12-19.)

Regarding claim 3, the primary reference discloses *wherein said monitoring step includes monitoring one or more of the following: average packet delay; packet delay variation; number of error packets; number of error packet blocks; and number of miss-inserted packets* (Referring to Figure 3, the Average Frame Error Rate of the mobile stations is measured. See column 4, lines 31-33.)

Regarding claim 4 as explained above in the rejection statement of claim 1, Seo discloses all of the claim limitations of claim 1 (parent claim.)

Seo does not disclose *increasing the actual quality level to the desired quality level of the communications session if the monitored actual quality level is equal to the desired quality level.*

Schuster teaches when the transmission delay or jitter for the transmission of a given packet-based signal exceeds/or less than a predetermined threshold, then the billing entity may decrease/increase its fee for the transmission; providing the signal whether the actual delay or jitter is equal-to/less-than/greater-than the threshold (See column 13, lines 44-53.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the billing system of Schuster in the system of Seo. One of ordinary skill in the art would have been motivated to do so in order to provide pricing that is reflective of the quality of service being provided as taught by Schuster (See column 14, lines 12-19.)

Regarding claim 5 as explained above in the rejection statement of claim 1, Seo discloses all of the claim limitations of claim 1 (parent claim.)

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Seo does not disclose *reducing the actual quality level to the desired quality level if the monitored actual quality level is equal to the desired quality level.*

Schuster teaches when the transmission delay or jitter for the transmission of a given packet-based signal exceeds/or less than a predetermined threshold, then the billing entity may decrease/increase its fee for the transmission; providing the signal whether the actual delay or jitter is equal-to/less-than/greater-than the threshold (See column 13, lines 44-53.)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to implement the billing system of Schuster in the system of Seo. One of ordinary skill in the art would have been motivated to do so in order to provide pricing that is reflective of the quality of service being provided as taught by Schuster (See column 14, lines 12-19.)

Response to Arguments

3. Applicant's arguments with respect to claims 1 and 3-5 have been considered but are moot in view of the new ground of rejection.

Rejection Under 35 USC § 103

On page 5 of the remarks, regarding claim 1, Applicant argues that Schuster does not teach *determining whether to increase or decrease fees, based, in part, on the adjusted actual quality level, and generating an adjusted billing statement to reflect the increased or decreased fees.* Applicant further argues, Schuster teaches adjusting fees based solely on the determined quality level and not on the adjusted actual quality level. Examiner respectfully disagrees. The determined quality level is a reflection of the adjusted actual quality level, because the adjusted actual quality level can be considered as a part of the determined quality level value. In more

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general terms, a current condition is a measure of the previous condition **and** any adjustment between the current and the previous measurements. Therefore, Schuster teaches *determining whether to increase or decrease fees, based, in part, on the adjusted actual quality level, and generating an adjusted billing statement to reflect the increased or decreased fees.*

Conclusion

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald L Mills whose telephone number is 703-305-7869. The examiner can normally be reached on 8:00 AM to 4:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hassan Kizou can be reached on 703-305-4744. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Donald L Mills



August 2, 2004



JOHN PEZZLO
PRIMARY EXAMINER